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VERSUS Louisiana

Date	Proceedings and Orders
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Jul 12 1984	Response requested.
Aug 13 1984	Brief of respondent Louisiana in opposition filed.
Oct 9 1984	REDISTRIBUTED. October 12, 1984
Oct 18 1984	REDISTRIBUTED. October 26, 1984
Oct 23 1984	Record requested.
Nov 8 1984	Record filed.
Nov 13 1984	REDISTRIBUTED. November 21, 1984
Nov 26 1984	Petition GRANTED. Judgment REVERSED and case REMANDED Opinion per curiam.

****

BEST AVAILABLE COPY

PETITION FOR WRIT OF CERTIORARI

83-6775

ORIGINAL

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

LILLIAN THOMPSON, Petitioner

vs.

STATE OF LOUISIANA, Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT, STATE OF LOUISIANA

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QUESTION PRESENTED

MAY A STATE, IN ORDER TO AVOID THE WARRANT REQUIREMENT AND ESCAPE THE EXCLUSIONARY RULE, UNDER THE FOURTH AMENDMENT, AND IN THE FACE OF MINCEY V. ARIZONA, 437 U.S. 385, 98 S.Ct. 2408, 57 L.ED.2d 290, ADOPT AN EXCEPTION TO THE RULE PREMISED UPON CREATING AN IMAGINARY POSTHUMOUS CONSENT BY THE "DEAD PERSON" TO SEARCH THE HOME OF THE PETITIONER AND THEREBY ALLOW THE POLICE TO CONDUCT A DETAILED SEARCH OF PETITIONER'S HOME FOR THE SPECIFIC PURPOSE OF DISCOVERING EVIDENCE OF CRIME, WHEN:

a) AT THE TIME OF THE SEARCH THERE WAS NO PLAIN VIEW PREMISE INVOLVED; and,

b) AT THE TIME OF THE SEARCH THERE WAS NO EXIGENT CIRCUMSTANCES OUTSTANDING: and,

c) BY THE POLICE AUTHORITY'S OWN ADMISSION THERE WAS TIME TO SECURE A WARRANT?

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LILLIAN THOMPSON, Petitioner

vs.

STATE OF LOUISIANA, Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT, STATE OF LOUISIANA

THE petition of Lillian Thompson respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Louisiana Supreme Court entered in these proccedings on February 27, 1984, rehearing denied on 23rd day of March, 1984.

OPINION BELOW

THE opinion of the Louisiana Supreme Court is cited as _____So2d_____,(La.1984), unreported as of the time of filing this petition, bearing Docket No. 82-KK-2859, appended hereto as Appendix "A", page 12 hereof and the denial of rehearing dated 23rd day of March, 984 is appended hereto as Appendix "B", page 13 hereof.

JURISDICTION

THE judgment of the Louisiana Supreme Court was entered on February 27,1984. See State v. Thompson, _____So2d_____, (La. 1984), (Appendix "A", page 12 hereof). A timely petition for rehearing was filed, and the Louisiana Supreme Court denied such rehearing on 23rd day of March, 1984. See State v. Thompson _____ So2d _____,(La. 1984), (Appendix "B", page 13 hereof).

This petition for Certiorari to the Supreme Court, State of Louisiana is filed herein within Sixty days of the denial of rehearing below. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3) and Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

CONSTITUTIONAL PROVISIONS INVOVLVED

THE Fourth Amendment to the United States Constitution provides:

> " The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized."

THE Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> " ... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdicition of equal protection of the laws. "

STATEMENT OF THE CASE

On May 18, 1982, several deputies from the Jefferson Parish Sheriff's Department arrived at defendant's home in response to a report by the defendant's daughter of a homicide. The deputies entered the house, made a cursory search and discovered defendant's husband dead of a gunshot wound in a bedroom and the defendant lying unconscious in another bedroom due to an apparent drug overdose. According to the defendant's daughter, the defendant had shot her husband, then ingested a quantity of pills in a suicide attempt, and then, changing her mind, called her daughter, informed her of the situation and requested help. The daughter then contacted the police. Upon their arrival, the daughter admitted them into the house and directed them to the rooms containing the defendant and the victim. The deputies

immediately transported the then unconscious defendant to a hospital and secured the scene. Thirty-minutes later two members of the homicide unit of the Jefferson Parish Sheriff's Office arrived and without the consent of anyone and without a warrant and by their own description commenced a "general exploratory search for evidence of a crime". By the deputies' own testimony at the hearing on the motion to suppress they had time to secure a warrant and there was no exigent circumstances outstanding (See transcript of suppression hearing, dated September 23, 1982, Appendix "C" page 14 hereof).

As a result of such search the deputies discovered and seized the following items, sought to be used as evidence againt petitioner:

> a) a .25 caliber pistol inside a closed chest of drawers; and,
>
> b) in the bathroom, a torn up note was found in the wastepaper basket; and,
>
> c) in another bedroom one of the deputies picked a christmas card off a dresser, discovered a four folded sheets of paper upon which was an alleged suicide note.

(See Transcript of suppression hearing, Appendix "C", page 14, hereof).

Subsequent to petitioner's indictment of Second Degree Murder she moved to suppress the evidence discovered by the homicide detectives and the trial court suppressed the .25 caliber pistol and the suicide letter found in the Christmas card. The Louisiana Supreme Court granted writs of review on behalf of the State and in its decision dated February 27,1984, rehearing denied on the 23rd day of March, 1984, Numbered 82-KK-2859 on its docket, reversed the trial court treating the constitutionality of the search under the Fourth Amendment of the Constitution of the United States of America and holding that Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 was distinguishable and the search was constitutional under the Fourth Amendment and such evidence is admissible.

And, now, petitioner timely files this Petition For Certiorari To The Louisians Supreme Court, in the Honorable, the U.S. Supreme Court of the United States within Sixty Days of the denial of rehearing by the Supreme Court of Louisiana.

REASONS FOR GRANTING THE WRIT

PETITIONER WILL HAVE NO OTHER REALISTIC REMEDY. UNDER THE LIMITATIONS OF Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067(1976), AND UPON TRIAL AND CONVICTION PETITIONER WOULD BE PUT THROUGH A VAIN AND USELESS ACT IN SUBMITTING THIS QUESTION TO THE STATE SUPREME COURT UPON APPEAL, SIMPLY TO REAPPLY HEREIN UPON ANOTHER APPLICATION FOR CERTIORARI. AS JUSTICE MARSHAL POINTED OUT WITH HIS CONCURRING OPINION IN Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290, TO-WIT:

> "With regard to the Fourth Amendment issue, however, we had little choice but to grant reveiw, because our decision in Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976), precludes federal habeas consideration of such issues. In Stone the Court held that, 'where the State has provided an opportunity for ufll and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground tht evidence obtained in an unconstitutional search or seizure was introduces at his trial.' Id., at 494, 96 S.Ct., at 3052(footnotes omitted). Because of this holding, petitioner would not have been able to present to a Federal Habeas Court the Fourth Amendment claim that the Court today unanimously upholds." Mincey v. Arizona, 98 S.Ct. 2408, at 2418.

THIS HONORABLE COURT SHOULD AND OUGHT TO GRANT THE WRIT OF CERTIORARI TO THE LOUSIANA SUPREME COURT, APPLIED FOR HEREIN, OTHERWISE THE FOURTH AMENDMENT WILL BE REDUCED IN DIGNITY, FORCE AND RESPECT.

ARGUMENT

> "There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant. Indeed, the police guardat the apartment minimized that possibility. And there is no suggestion that a search warrant could not easily and conveniently have been obtained. We decline to hold that the seriousness of the offense under investigation itself creates exigent circumstances of the kind that under the Fourth Amendment justify a warrantless search." Mincey v. Arizona, 98 S.Ct. 2408, at 2414.

Justice Blanche, writing for the majority of the Louisiana Supreme Court, uses the following premises to distinguish Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290, to-wit:

> "Mr. Thompson had authority over the premises wherein he was killed and, had he survived until the police arrived, could have consented to their search even over the protests of the defendant. United States v. Matlock, 415 U.S. 164(1974); State v. Dowling, 387 So2d 1165 (La. 1980); State v. Dupuy, 319 So2d 299 (La. 1975). Additionally, the two hour, same day search conducted at the Thompson residence was far less aggravated than the four day intensive investigation that was the subject of the Mincey opinion. For these reasons, we find the instant case distinguishable from Mincey." Page 8, slip opinion, appendix "A" page ___ hereof.

It is respectfully submitted that the Majority of the Louisiana Supreme Court, through Justice Blanche, should not be constitutionally allowed to create an assumptive, presumptive, posthumous free and voluntary consent to search for the simple reason that it creates a conclusive presumption thereby shifting the burden of proof to the defendant concerning the waiver of a Constitutional Right. A warrantless search based solely upon the speculative, assumed, and presumed posthumous consent of a dead man should not have any standing under the Fourth and Fourteenth Amendment of the Constitution of the United States of America.

> "The State argues that justification can be found by the consent given by Sutton to enter the house. Both the Missouri Supreme Court and the District Court rejected this contention, and we think properly so. In the first place, any consent which

> Sutton may conceivably have given to enter his home was given, not to the police officers, but to the commercial ambulance operator. Sutton did not call the police, never talked to them, and so far as the record shows never even had any knowledge that they were on the way to his house or intended to enter it. In the second place, any consent which waives Fourth Amendment rights must be freely and intelligently given. Drummond v. United States, 350 F.2d 983, 988 (8Cir. 1965), cert. denied, Castaldi v. United States, 384 U.S. 944, 86 S.Ct. 1469, 16 L.Ed.2d 542." Root v. Gauper, 438 F.2d 361 (8 Cir. 1971).

The Eighth Circuit, in Root v. Gauper, supra., adopted the language of Judge Seiler in his dissent in State v. Sutton, 454 S.W.2d at 494-495, "But where entry is justified, it must be on a basis other than a fictionally contrived consent." (See Root v. Gauper, 438 F.2d 361 at 364.

It seems clear that the Louisiana Supreme Court's imaginary posthumous consent by the decedent does not fit under any of the recognized exceptions to the warrant requirement of the Fourth Amendment.

Justice Blanche puts forth the concept of a some type of less aggravating search standard. The warrant requirement of the Fourth Amendment, as applied to the State through the Fourteenth Amendment is not excused because a search is less aggravating than others.

The transcript of the testimony of the Deputies, at the suppression hearing, clealy shows that no exceptions to the warrant requirement of the Fourth Amendment was in existence at the time of the search, to-wit:

> " Q. Officer, did you or any one to your knowledge obtain a search warrant for the premises at 32 Caribou Court?
>
> A. No. "

(See Appendix "C", page 14 hereof, trans. page 7, line 14 thru 17).

> " Q. Now the evidence your spoke of was seized and taken after she was transported to Baptist Hosptial?
>
> A. Correct."

(See Appendix "C", page 14 , hereof, trans. page 7, line 27 thru 29).

> " Q. Was the evidence seized or taken from the residnce after the children were removed from the house?
>
> A. Correct.
>
> Q. The house you mentioned was guarded, I think you said secured by the police when the evidence was seized?
>
> A. Correct.
>
> Q. How long did the investigation of the premises take approximately?
>
> A. I'd say we spent at least an hour and half or two hours.
>
> Q. At the residence?
>
> A. Yes.
>
> Q. Certainly enought time to obtain a search warrant?
>
> A. Correct.
>
> Q. And the evidence was seized, no one other than the police were in that house, is that correct?
>
> A. Yes.
>
> Q. You did not receive the consent to search the home from either of the children?
>
> A. No.
>
> Q. ...
>
> A. ...
>
> Q. ...
>
> A. ...
>
> Q. Did you fear for your life or nay of your fellow officers when you went through the residence?
>
> A. No. "

(See Appendix "C", page 14 hereof, trans. page 8.).

> " Q. The gun that you mentioned was found inside the chest of drawers?
>
> A. Yes.
>
> Q. And that was closed, correct?
>
> A. Correct.
>
> Q. The gun therefore was not in plain view?
>
> A. That's correct.

Q. ...

A. ...

Q. The note found inside a Christmas card was folded in it, wasn't it?

A. Correct."
(See Appendix "C" page 14 hereof, trans. page 9.)

" Q. Would it be fair to say sir that you were exploring the entire residence for evidence of a crime when you went throught it?

A. Correct.

Q. Did anyone while you were present in the residence and before the evidence was actually seized by the police, could any have taken that evidence and destroyed it, misplace it, confiscated it in some manner?

A. No, sir."
(See Appendix "C", page 14 hereof, trans. page 10.).

Justice Dennis of the Louisiana Supreme Court in his dissenting opinion correctly declares that the search concerned herein was in violation of the Fourth Amendment and Mincey v. Arizona, supra., is not distinguishable. Justice Dennis' dissent is respectfully submitted in support of this petition for Certiorari (See Appendix "D", page 15 hereof). The following excerpts from Justice Dennis' dissent points up the weaknesses of the majority opinion, to-wit:

" Applying these precepts, it is clear that the trial judge correctly suppressed the gun and the suicide note as products of an unlawful warrantless search.

The deputies first summoned to the murder scence were entitled to make, and did make, a prompt warrantless search of the premises to see if there were other victims of persons in need of immediate aid of if a killer was still on the premises. Their search was strictly confined to these purposes.

The search conducted by the homicide detectives which resulted in uncovering the gun and suicide note, however, was not a response to an emergency situation because the detctvies could not have reasonably believed that there was anhone within the house who was a victim, culprit or a person in need of aid. As the detectives were aware, before they began their search, their fellow officers had surveyed the premises for other persons, removed the occupants and secured the house against intruders. The detectives frankly testified that they had ample time to obtin a warrant, but chose not to do so, and that the suicide note was discovered during a systematic seach for evidence.

. . . . . .

. . . . . In the instant case, none of the conditions essential to a plain view seizure were met. . . . . The note was not discovered inadvertently, but was found during this intentional detailed search for evidence. . . .

. . . . Therefore, it is clear that the detectives did not respond to an emergency situation but engaged in a deliberate warrantless search for evidence which is proscribed by the Fouth Amendment. The initial entry by the other officers was unquestionably a lawful response to an emergency situation. But, the general warrantless search by the two homicide detectives who arrived at the murder scecne after the victim had been discovered, the defendant had been taken to the hospital, a search for other occupants had been made, and the scene had been secured, was clearly illegal and unjustified because of the absence of any emergency or exigency. Mincey, supra. at 393, 98 S.Ct. at 2413-2314. . . .

. . . . Whether the victim was slain in his own home or elsewhere is not relevant. Nor is the intensity or aggravated nature of the search, if the intrusion is not authorized by an emergency situation. Therefore, since the evidence is clear that there was no emergency at the time the search complained of in the present case was conducted, the intrusion was plainly unjustified and the trial court was correct in suppressing its fruits as evidence." Dissent of Justice Dennis, Appendix "D", page 15 hereof.

Chief Justice Dixon's dissent says it all: "I RESPECTFULLY DISSENT. ALL IT WOULD TAKE TO MAKE THIS SEARCH LEGAL IS A WARRANT". (See Chief Justice Dixon's Dissent, Appendix "E", page 16 hereof).

In Sample v. Eyman, 469 F2d 819 (9th Cir. 1972), a case wherein a domestic killing took place in the couple's home the Court puts it very simply, to wit:

> The search was not conducted contemporaneously with the arrest, thus distinguishing this case from Vale v. Louisiana, 399 U.S. 30, 90 S.Ct. 1969, 26 L.Ed.2d 409(1969), and there was no danger that evidence would be secreted or destroyed since the empty dwelling was being guarded by a policeman. The appellee having given no reason why a warrant could not be obtained, we find the failure to have done so constitutional error. " Sample v. Eyman, supra. at 469 F2d 819 at 822.

CONCLUSION

For the reasons set out herein this Honorable Court should and ought to issue its Writ of Certitorari to review the judgment and opinion of the Louisiana Supreme Court, concerned herein.

RESPECTFULLY SUBMITTED.

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APPENDIX "A"

STATE V. THOMPSON, ___So.2d _____, (La. 1984).

JUDGMENT OF LOUISIANA SUPREME COURT

ENTERED ON FEBRUARY 27, 1984

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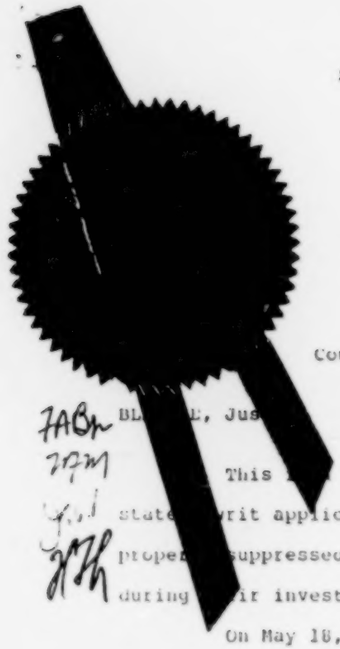

FEB 27 1984

SUPREME COURT OF LOUISIANA

NO. 82-KK-2859

STATE OF LOUISIANA

versus

LILLIAN THOMPSON

On Writ of Certiorari
to the
Court of Appeal, Fifth Circuit

SUPREME COURT OF LOUISIANA
A TRUE COPY
Frank J. Labranche, Jr.
Clerk of Court

BLANCHE, Justice

This is a search and seizure case. We granted the state's writ application to consider whether the trial judge properly suppressed evidence discovered by police officers during their investigation at a murder scene.

On May 18, 1982, several deputies from the Jefferson Parish Sheriff's Department arrived at defendant's home in response to a report by the defendant's daughter of a homicide. The deputies entered the house, made a cursory search and discovered defendant's husband dead of a gunshot wound in a bedroom and the defendant lying unconscious in another bedroom due to an apparent drug overdose. According to the defendant's daughter, the defendant had shot her husband, then ingested a quantity of pills in a suicide attempt, and then, changing her mind, called her daughter, informed her of the situation and requested help. The daughter then contacted the police. Upon their arrival, the daughter admitted them into the house and directed them to the rooms containing the defendant and the victim. The deputies immediately transported the then unconscious defendant to a hospital and secured the

Dixon C.J. dissents w/ reasons.
Calogero, J. concurs and assigns reasons
Dennis, J. dissents and assigns reasons
Lemmon, J., subscribes to the opinion and assigns additional reasons

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scene. Thirty-five minutes later two members of the homicide unit of the Jefferson Parish Sheriff's Office arrived and conducted a follow-up investigation of the homicide and attempted suicide.

The homicide investigators entered the residence and commenced what they described at the motion to suppress hearing as a "general exploratory search for evidence of a crime." During their search, which lasted approximately two hours, the detectives examined each room of the house. In the room where the victim was found, the investigators discovered a .25 caliber pistol inside a chest of drawers. During their search of an adjacent bathroom, a torn up note was found in the wastepaper basket. Another letter, an alleged suicide letter, was discovered in the bedroom from which defendant had been removed. The investigating officer entered the room and noticed a red Christmas card lying on top of a chest of drawers. Considering a Christmas card lying in the open during the month of May to be suspicious, the officer opened the card and discovered four folded sheets of paper upon which the alleged suicide message was written.

Following the defendant's indictment for the second degree murder of her husband, she moved to suppress the evidence discovered by the homicide detectives. The investigating officers testified at the motion to suppress hearing that they had had time to secure a warrant prior to commencing their search, but did not. The detectives further testified that the deputies had searched for victims and suspects prior to their arrival and that theirs was a deliberate search for evidence. Upon hearing the evidence, the trial court initially denied defendant's pretrial motion. Subsequently, defendant requested a reconsideration by the

trial court in light of several decisions by this court and by the United States Supreme Court. The trial court granted her motion for reconsideration and partially reversed its original decision by suppressing two pieces of evidence, the gun and the suicide letter found in the Christmas card. The Court of Appeal denied the state's application for a writ of review.

We granted the state's application for writs to determine two questions:

> (1) Whether the trial court had the authority to reconsider its earlier denial of the motion to suppress; and, if so,
>
> (2) Whether the trial court properly suppressed the evidence seized by the officers as fruits of an illegal search.

1.

Initially, the state contends that the trial court erred when it reconsidered the original denial of the defendant's motion to suppress.

Ordinarily, if the ruling on a motion to suppress is adverse to the defendant, he can reserve a bill of exceptions for use in a regular appeal of the case. See La. C.Cr.P. art. 703, Comment (f). However, nothing in the Code of Criminal Procedure prohibits the action taken in the present case.

In Louisiana, a ruling on a motion to suppress prior to trial is binding at the trial. La. C.Cr.P. art. 703F. However, the implication of this limitation is that a ruling on a motion to suppress is not binding until trial begins.

Out of a concern for the expeditious treatment of a motion to suppress and because of other fairness and policy considerations, we have limited the "not binding before trial" implication of the Code. In State v. Landry, 339 So.2d 8 (La. 1976), we held that the State may not seek a rehearing of the

grant of a motion to suppress in order to put on new evidence to support the constitutionality of a search. Landry suggests further that a defendant may not seek a rehearing to introduce new evidence once a trial court denies his motion to suppress.

In the present case, however, the defendant did not seek to introduce additional evidence upon rehearing. Instead, he sought reargument and reconsideration of his motion based upon the evidence previously introduced. Thus, the concerns for time-consumption and the implications of possible unfairness addressed in Landry are not present in the instant case. The reconsideration by the trial judge of the applicable jurisprudence produced no delay in these proceedings. Although such reconsiderations should be sparingly made and limited to instances when the trial judge firmly believes that his prior decision was legally infirm, such reconsiderations do not hamper, but actually promote, judicial efficiency.

Therefore, we conclude that the trial court did not abuse its discretion in reconsidering, for reargument without additional evidence, its earlier denial of the defendant's motion to suppress.

2.

The second issue in this case is whether the warrantless search of the murder victim's residence was reasonable under the federal and state constitutional restrictions governing searches and seizures.

In order to decide whether this evidence must be suppressed, we must examine the purpose behind the Fourth Amendment protection and the reasons behind its creation. From such an examination, we can determine whether, in light of these purposes and reasons, the

search conducted by the police in this case was "unreasonable".

The United States and Louisiana Constitutions expressly proscribe all "unreasonable searches and seizures." U.S. Const. amend. IV, XIV; La. Const. art. I, §5. Specifically, the Fourth Amendment to the United States Constitution assures the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Amendment was primarily a reaction to the evils associated with the use of the general warrant in England and the writs of assistance in the Colonies,[1] and was intended to protect the "sanctity of a man's home and the privacies of life" from searches under unchecked general authority. Boyd v. United States, 116 U.S. 616 (1886). Thus, the purpose of the Amendment was to protect a citizen against unbridled and unjustified governmental invasions of the citizen's privacy interests, specifically his own person, house, papers or effects.

The United States Supreme Court has expressed time and time again that the mandate of the Fourth Amendment, made applicable to the many states through the Fourteenth Amendment, requires adherence to judicial process and "that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions." Katz v. United States, 389 U.S. 347 (1967) (Footnotes omitted); see also Mincey v. Arizona, 437 U.S. 385 (1978); United States v.

---

[1] See generally LaFave, Search and Seizure, a Treatise on the Fourth Amendment, §1.1 (1978); J. Landynski, Search and Seizure and the Supreme Court (1966); N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution (1937).

Matlock, 415 U.S. 164 (1974); Terry v. Ohio, 392 U.S. 1 (1968); Camera v. Municipal Court, 387 So.2d 1073 (La. 1982); State v. White, 399 So.2d 172 (La. 1981); State v. Dowling, 387 So.2d 1165 (La. 1980). This "per se" rule has been recently reaffirmed by the United States Supreme Court in Mincey v. Arizona, supra, and United States v. Ross, ___ U.S. ___, 102 S.Ct. 2157 (1982). Yet the Court has never applied this rule automatically without an examination of the factual circumstances surrounding the search. The Court has consistently recognized that:

> [T]he constitutionality of a particular search is a question of reasonableness and depends on "a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." Mincey v. Arizona, 437 U.S. at 406 (Rehnquist, J., concurring), quoting United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975).

The "public interest" involves the societal costs incurred due to the exclusion of evidence seized in violation of the Fourth Amendment. Such evidence usually forms the basis of the case against the accused because it is factual, tangible evidence of the most reliable nature. Its exclusion results in a harm to society by interfering with the truthseeking function of a criminal trial. Society must absorb the cost of the exclusion's result - that a violent criminal is returned to freedom within society. Thus, there is a public interest in bringing the criminal element of our society to justice.

The intrusion into the "sanctity of a man's home and the privacies of life", Boyd v. United States, supra, must be balanced with the public interest in bringing criminals to justice and with the societal costs involved in releasing a criminal back into society in determining whether a search is "unreasonable". This balancing must be made by an examination

of the totality of the circumstances surrounding the alleged illegal search to determine whether that search was "unreasonable" under the Fourth Amendment. cf. United States v. Brignoni-Ponce, supra; Terry v. Ohio, 392 U.S. 1 (1968); Camera v. Municipal Court, 387 U.S. 523 (1967). Common sense dictates that reasonableness varies with the circumstances of the search. Preston v. United States, 376 U.S. 364 (1964). Whether a particular search is unreasonable is something to be determined by the facts of a given case. Schmerber v. California, 384 U.S. 757 (1966); see also Justice Black's dissent in Vale v. Louisiana, 399 U.S. 30, 36 (1970).

Defendant contends that Mincey v. Arizona, 437 U.S. 385 (1978), dictates that evidence seized during a warrantless search of a murder scene must be suppressed as the fruit of an illegal search. We find Mincey distinguishable from the facts of this case. In Mincey, an undercover policeman was shot and killed during a drug raid on the defendant's apartment. The police secured the scene and then conducted an intense investigation of the scene without a warrant. The search lasted four days during which two to three hundred objects were examined, inventoried, and seized. The United States Supreme Court found that this extensive warrantless search was not justified under any exception to the warrant requirement, and as such, was unreasonable and illegal. The Court expressly found that the Arizona Supreme Court's "murder scene" exception was inconsistent with the Fourth and Fourteenth Amendments because it left too much discretion with the police in determining the reasonableness of the search.

The Mincey case, however, involved a victim killed on another's property. The policeman killed had no privacy interest in the apartment that was searched. In the case

before us, the victim was killed in his own home. While the policeman shot in Mincey could not have consented to the search of the apartment he was shot in, as he had no authority over that apartment, Mr. Thompson had authority over the premises wherein he was killed and, had he survived until the police arrived, could have consented to their search even over the protests of the defendant. United States v. Matlock, 415 U.S. 164 (1974); State v. Dowling, supra; State v. Dupuy, 319 So.2d 299 (La. 1975). Additionally, the two hour, same day search conducted at the Thompson residence was far less aggravated than the four day intensive investigation that was the subject of the Mincey opinion. For these reasons, we find the instant case distinguishable from Mincey.

Additional facts in this case evidence a diminished privacy expectation by the defendant. The defendant herself telephoned her daughter, informed her of the situation and requested assistance. The daughter then called the police, met them at the defendant's residence, and let them in. The defendant was found in an unconscious state. The police were faced with a situation where both parties with authority over the premises were either dead or unconscious and in an apparently grave condition. A third party, defendant's daughter, portraying an apparent authority over the premises through the defendant's request for assistance, met and admitted the police to the premises. Thus, the defendant's privacy interests under these facts are greatly diminished from those of the defendant in Mincey.

The need for Fourth Amendment protection is lessened as the privacy interest in an area is diminished. The reasons for preserving the sanctity of the home and the privacies of life find less support when the citizen claiming the right has

exhibited a diminution of their privacy interest. At the same time, the public interest remains the same. In balancing this minor intrusion into the defendant's diminished privacy interests against the public interests, we come to the conclusion that the same day investigation conducted by the police was not unreasonable under the Fourth Amendment. We find that the intrusion by the police in conducting a two hour search, during which the .25 caliber handgun and the four page suicide letter were seized, when examined under the totality of the circumstances, was not so pervasive as to constitute an "unreasonable" search under the Fourth Amendment to the United States Constitution. Any privacy interest held by the victim passed with his death. The victim has no privacy interests to protect. The defendant, who shared a privacy interest in the premises with the victim, exhibited a voluntary diminution in her privacy interest when she herself summoned help. Under these facts, the search conducted by the police in this case was reasonable.

For these reasons, we find the seizures made by the police under these facts were reasonable. As such, the defendant's motion to suppress any evidence gained through such a search should have been overruled.

DECREE

For the reasons stated, the ruling of the trial court is reversed and the case is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED

SUPREME COURT OF LOUISIANA

NO. 82-KK-2859

STATE OF LOUISIANA

VERSUS

LILLIAN THOMPSON

CALOGERO, Justice, concurring

The United States and Louisiana Constitutions proscribe all unreasonable searches and seizures. U.S. Const. amend. XIV; La. Const. 1974 Art. I, Sec. 5. The search in this case by police officers called to the scene and admitted to the premises by the daughter of a couple, one dead, and the other unconscious, was not unreasonable.

FEB 27 1984

SUPREME COURT OF LOUISIANA

NO. 82-KK-2859

STATE OF LOUISIANA

versus

LILLIAN THOMPSON

LEMMON, Justice, Subscribing to the majority opinion and assigning additional concurring reasons.

Although I fully subscribe to the majority opinion, I add these additional reasons why it would be unreasonable for this court to hold that the search was "unreasonable" under either La. Const., Art. I §5 (1974) or the Fourth Amendment.[1]

The Mincey decision, as is well illustrated in the majority opinion, is not controlling.[2] There is a clear basis for distinguishing the relatively brief search of the murder victim's own home from an extended four-day search of premises occupied by someone other than the murder victim. When a resident of the premises is murdered, there is a significant diminishing of the expectations of privacy of the other persons residing

---

[1]A contrary decision could also raise an extremely disturbing prospect under the "expanded standing" rule of La. Const. Art. I, §5 (1974), if an uninvited intruder, after murdering a homeowner, claimed that a police search (such as conducted here), was unreasonable from the standpoint of other occupants of the home and sought to have the "fruits" of the search suppressed.

[2]See the concurring opinion of Justice Rehnquist in Mincey. Similarly, the occupants of a home seriously harmed by a fire suffer significant reduction in privacy for a reasonably prompt fire marshal's investigation into the cause of the blaze. See Michigan v. Tyler, 436 U.S. 499 (1978).

there.[3] And when the police are called to the premises, are admitted inside by someone with apparent authority to do so, and are furnished reliable information establishing probable cause to believe that there may be physical evidence on the premises which might reveal (or confirm) the circumstances of the killing and the identity of the killer, then a prompt contemporaneous search is clearly justified.

Moreover, the police in this case were faced with the possibility that evidence might be destroyed. Under those circumstances, it would have been reasonable to secure the home (even against other occupants) during the time necessary to secure a search warrant. An equally reasonable means of preserving evidence was to conduct an immediate search based on probable cause, which should not be considered a "greater intrusion" necessitating prior judicial approval. See Chambers v. Maroney, 399 U.S. 42 (1970), in which the Court stated with regard to an automobile search:

> "Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the 'lesser' intrusion is permissible until the magistrate authorizes the 'greater.' But which is the 'greater' and which the 'lesser' intrusion is itself a debatable question and the answer may depend on a variety of circumstances. For constutitional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." (Emphasis supplied.)

See also Robbins v. California, 453 U.S. 420 (1981) overruled by United States v. Ross, 456 U.S. 798 (1982).

---

[3] In cases involving automobile searches, the Court has indicated a willingness to recognize the reasonableness of probable cause-based warrantless searches because of the diminished expectation of privacy. The surviving occupants of a home in which another occupant (not an intruder) has been murdered, sufier a significant diminution in their expectations of privacy in that home for a reasonably brief period during which police conduct a reasonable search (both in scope and duration) for evidence tending to identify and prove the guilt of the murderer of the resident (even if that murderer happens to be another person who may claim a reasonable expectation of privacy in those premises).

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APPENDIX "B"

STATE V. THOMPSON, ___So.2d_____, (La. 1984).

DENIAL OF REHEARING,

DATED 23RD DAY OF MARCH, 1984

BY THE LOUISIANA SUPREME COURT

CONSISTING OF PAGE 1

Supreme Court of Louisiana

NEW ORLEANS, 70112

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE # 37

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 23rd day of March, 1984, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson, and Harry T. Lemmon, in the cases listed below:

REHEARINGS DENIED:

82-KA-2186 State v. George Griffon

82-KA-2206 State v. Raymond Captville
DIXON, C.J., & CALOGERO, J., would grant a rehearing.

82-KA-2229 State v. Frank George and Victor Tyrone Young
(Two Applications - by defendants)

82-KA-2249 State v. Roy Lee Williams

82-KA-2335 State v. William D. Pelt

82-KK-2859 State v. Lillian Thompson
DENNIS, J., would grant a rehearing.

83-C-0655 Kathleen Austen v. Wallace Sherwood, et al
MARCUS & BLANCHE, J.J., would grant a rehearing.

83-C-1204 Isabel Mitchell v. Willie Clark, Jr., et al
LEMMON, J., would grant a rehearing.

83-C-1543 Chevron U. S. A., Inc. v. Martin Exploration, et al

SUPREME COURT OF LOUISIANA
A TRUE COPY

Frank J. Labranche, Jr.
Clerk of Court

APPENDIX "C"

TRANSCRIPT OF TESTIMONY TAKEN AT

HEARING ON MOTION TO SUPPRESS ON

SEPTEMBER 23, 1982

CONSISTING OF PAGES 1 THRU 23

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

* * * * * * * * * * * * * *

STATE OF LOUISIANA	*	NUMBER	82-1787
VERSUS	*		
LILLIAN THOMPSON	*	DIVISION	"L"

* * * * * * * * * * * * * *

Excerpt of testimony taken in the above numbered and entitled cause on Thursday, September 23, 1982, before the Honorable Lionel R. Collins, Judge, presiding.

APPEARANCES:

P. MICHAEL CULLEN, Esq.
Assistant District Attorney

CLIFFORD E. CARDONE, Esq.
Attorney for Defendant

REPORTED BY: SUSAN STENTZ, O.C.R.

WITNESSES

SAM ZINNA ---------- page 3
SERGEANT ROBERT MASSON ---------- page 14

EXCERPT OF PROCEEDINGS

SAM ZINNA, 6801 Veterans Boulevard, Metairie, Louisiana was called as a witness and after having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. CULLEN:

Q. Do you recall the date of May 18, 1982?

A. Yes, I do.

Q. And by whom were you employed on that date?

A. The Jefferson Parish Sheriff's Office, Homicide Unit.

Q. Were you on duty on that date?

A. Yes, I was.

Q. Did you have occasion to go to 32 Caribou Court, Metairie, Louisiana, on that date?

A. Yes.

Q. Is that located in Jefferson Parish?

A. Yes, it is.

Q. And why did you go to that address?

A. I was notified at approximately 9:15 A.M. of a purported homicide at that location and I arrived at approximately 9:45 A.M. At that time I met with Detective Knudsen, Fourth District Patrol Division and he advised me that he received a call of a shooting at that location and in which the victim was located on the east bedroom of the residence and he had been identified as Sylvester Thompson, and he also learned upon arrival that his wife, Mrs. Lillian Thompson has shot Mr. Thompson, and upon which she had

induced an overdose of drugs, and she was transported to Baptist Hospital in New Orleans.

Q. Did you take any evidence from number 32 Caribou Court?

A. Yes, I did.

Q. What items of evidence were removed?

A. Okay, it was a .25 caliber automatic pistol and a four page letter was found in one of the bedrooms by Sergeant Masson during the process of the scene and also a note that was torn up was found in the wastepaper basket in the bathroom which adjoined the southeast bedroom, where the victim was found.

Q. Tell me what you did when you got there and how you came to obtain the evidence?

A. During the processing of the scene, which was where the victim was located, in the southeast bedroom, we collected blood and I did a diagram of the scene and got all pertinent information relative to the scene and at that point, we did not see any weapons. We continued on and during the processing of the scene, we located a .25 caliber weapon in the chest of drawers in the bedroom.

Q. This was when you first got there, you described the victim, and you said the victim and his wife, were they in the same room?

A. Okay, the victim was located in the southeast bedroom and Mrs. Thompson, according to Knudsen, was in another room of the residence, and which

prior to my arrival, she was transported to Baptist Hospital, due to a possible overdose.

Q. Were any of there -- was anyone in the home other than the police?

A. At the time of my arrival?

Q. Yes.

A. No, just the security by the Sheriff's Office.

Q. Was the daughter or the son of the occupants of that house present?

A. Yes, sir, Debra Bonin, the victim and the perpetrator's daughter was at the residence, and which she spoke with Deputy Knudsen prior to myself and Sergeant Masson's arrival. However, Sergeant Masson and Ms. Bonin were on the exterior of the residence, and Ms. Bonin advised --

MR. CARDONE:

Your Honor, I suspect that a hearsay answer is forthcoming.

THE COURT:

I do not understand, what was the Objection?

MR. CARDONE:

I think that it was leading to a hearsay response of Ms. Bonin.

THE WITNESS:

Sergeant Masson can attest to that.

BY MR. CULLEN:

Q. When you came in, you saw the body of the victim in one bedroom?

A. The southeast bedroom.
Q. And then the place where the alleged perpetrator had been before she was taken to the hospital?
A. That was in a different bedroom.
Q. And then after securing the scene, you all proceeded to look for evidence?
A. Correct.
Q. Okay, where was the various items found?
A. One of the letters which was found, a four page letter was found tucked inside of a Christmas card, and it was found in one of the other bedrooms. Since Sergeant Masson collected that -- another note was found in the wastepaper basket in a bathroom, which adjoined the southeast bedroom.
Q. That's where the victim was?
A. Correct, in the wastepaper basket was a note torn up, which these papers were collected and taped together the best way possible, which it was hard to get any details of what the note exactly said.
Q. Okay, the weapon?
A. It was found in the chest of drawers in the southeast bedroom where the victim was located.
Q. Were those the only items found on the scene?
A. Correct.
Q. Okay, were any other items of evidence taken at any time?
A. No, there were not.
Q. How about at the hospital?

A. No, sir, -- can I refer back to my notes to be sure?
Q. You can refer back to your notes to refresh your memory.
A. Just the clothing from the alleged perpetrator was taken from the hospital.
Q. Who took that?
A. Okay, Detective Lark (spelled phonetically) of the Homicide Unit.
Q. He went to the hospital and collected that?
A. Correct.

MR. CULLEN:

No further questions.

CROSS EXAMINATION

BY MR. CARDONE:

Q. Officer, did you or anyone to your knowledge obtain a search warrant for the premises at 32 Caribou Court?
A. No.
Q. When you arrived, to your knowledge, when you arrived or anyone under your offices arrived, was the defendant Mrs. Lillian Thompson unconscious in another bedroom from where the victim was located?
A. Upon my arrival, the perpetrator, the accused was already placed in an ambulance and was being transported to Baptist Hospital and in which, according to Deputy Knudsen, she was unconscious.
Q. Now the evidence you spoke of was seized and taken after she was transported to Baptist Hospital?
A. Correct.

Q. Was the evidence seized or taken from the residence after the children were removed from the house?
A. Correct.
Q. The house you mentioned was guarded, I think you said secured by the police when the evidence was seized?
A. Correct.
Q. How long did the investigation of the premises take approximately?
A. I'd say we spent at least an hour and a half or two hours.
Q. At the residence?
A. Yes.
Q. Certainly enough time to obtain a search warrant?
A. Correct.
Q. And the evidence was seized, no one other than the police were in that house, is that correct?
A. Yes.
Q. You did not receive the consent to search the home from either of the children?
A. No.
Q. As a matter of fact, neither of the children lived there?
A. Yes, Debra Bonin as well as I can remember and I think the Thompson's son lived there as well.
Q. But, you did not get a consent to search the residence?
A. No.
Q. Did you fear for your life or any of your fellow officers when you went through the residence?

A. No.
Q. Now, when you went to the residence, you were searching for persons or things?
A. Items, things.
Q. The gun that you mentioned was found inside the chest of drawers?
A. Yes.
Q. And that was closed, correct?
A. Correct.
Q. The gun therefore was not in plain view?
A. That's correct.
Q. The note that was found in the bathroom was torn up inside of a wastepaper basket?
A. Yes.
Q. From its outward appearance you could not or it would not give you any reason that it was evidence of a murder investigation, is that correct, the outward appearance of the pieces of paper in the wastepaper basket?
A. No.
Q. The note found inside a Christmas card was folded in it, wasn't it?
A. Correct.
Q. And the Christmas card was lying face down in a dresser in a bedroom other than where the victim was found?
A. You'd have to question Sergeant Masson on that fact.
Q. You have the police report in front of you?
A. Yes.

Q. You have been referring to that police report to refresh your memory?
A. Yes.
Q. Do you have any independent recollection of where that Christmas card was found?
A. It was found in one of the bedrooms or on the table in the kitchen, I really can't recall.
Q. To your knowledge sir, was that note stashed inside of that Christmas card and from the outward appearance, did it look to be evidence in a murder investigation?
A. No.
Q. Was any blood on it?
A. No.
Q. Would it be fair to say sir that you were exploring the entire residence for evidence of a crime when you went through it?
A. Correct.
Q. Did anyone while you were present in the residence and before the evidence was actually seized by the police, could anyone have taken that evidence and destroyed it, misplaced it, confiscated it in some manner?
A. No, sir.
Q. Moving to the hospital, to the best of your recollection and knowledge where did the clothes come from, do you know where the clothes came from?
A. Detective Nuzzilo (spelled phonetically) received the clothing from a nurse who removed the clothing

from the perpetrator upon her arrival at the hospital.
Q. It would be fair to say that the defendant was unconscious when the clothing was removed and given to the hospital personnel?
A. Could you repeat that question?
Q. Would it be fair to say that based upon your knowledge and investigation, the lady was unconscious when taken and given to the hospital personnel?
A. Yes.
Q. Therefore she didn't give any consent for anyone to take the clothes from her?
A. No, she was unconscious.
Q. Specifically, did the police gain consent from anyone aside from the hospital personnel to take the clothing?
A. No.
Q. Sir, from viewing the circumstances at the scene when you walked into that scene, apparently you saw the decedent lying on the bedroom floor over two shot-guns, and from that evidence and any evidence that you saw with your eyes in plain view, was there any indication that a gun was in the dresser drawer closed?
A. Other than the fact that we did not find one in the open.
Q. Were there any indication, any physical evidence in plain view that the note was tucked in a Christmas card?

A. No.

Q. Was there any evidence that a note was torn in the wastebasket in the bathroom?

A. No.

MR. CARDONE:

No further questions at this time.

MR. CULLEN:

No questions.

THE COURT:

Officer, let me ask you this, you received a call that somebody had been killed at that address?

THE WITNESS:

Correct.

THE COURT:

Pursuant to that call you immediately went to the house?

THE WITNESS:

Yes.

THE COURT:

And once you saw that someone was in fact killed or dead, you immediately proceeded to look for a weapon?

THE WITNESS:

Correct.

THE COURT:

You saw no weapon in the area where the party was lying?

THE WITNESS:

No, not in any open area, no, sir.

THE COURT:

How far away from where the party was killed did you find a weapon?

THE WITNESS:

Approximately three or four feet from where the victim was lying, to the chest of drawers.

THE COURT:

In other words, the chest of drawers was in the same room as the victim was?

THE WITNESS:

Yes.

THE COURT:

Do you recall at the time whether the drawer was open or closed?

THE WITNESS:

It was closed.

THE COURT:

All right, I understand. Now let me ask you something about the wastepaper basket, you found paper torn up?

THE WITNESS:

Yes.

THE COURT:

How far away from where the victim was?

THE WITNESS:

Approximately two feet, it was the, in the immediate doorway which adjoined the bedroom.

THE COURT:

You saw the --

THE WITNESS:

The paper was torn up.

THE COURT:

Was something about a letter in a Christmas card, how far away from the victim was that?

THE WITNESS:

It would be hard to say but, it was located in a separate bedroom or possibly in the kitchen, I could not recall what part of the house.

THE COURT:

Okay, thank you, you may step down.

MR. CULLEN:

Sergeant Masson.

SERGEANT ROBERT MASSON, 200 Huey P. Long, Avenue, Gretna, Louisiana, was called as a witness and after having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. CULLEN:

Q. By whom are you employed?

A. Jefferson Parish Sheriff's Department.

Q. Do you recall the date of May 18, 1982?

A. Yes.

Q. Did you have occasion on that date to go to number 32 Caribou Court, Metairie?

A. Yes, I did.

Q. While there, did you obtain any evidence?

A. Yes, sir, I assisted Detective Zinna in processing the scene of a homicide.

Q. And what evidence, if any, did you collect?

A. I located in one of the bedrooms or in a den, a Christmas card with a note in it and I also located a torn up several pieces of paper with handwriting in a trash can in a bathroom.

Q. Okay, where were these articles in relation to the victim?

A. Okay, the victim was in one of the bedrooms and there was a door leading from the bedroom to the bathroom, and there was a garbage can located just inside the bathroom door, which was adjoining to the bedroom where the victim was.

Q. Did the garbage can have a cover or anything?

A. No, it did not.

Q. It was open?

A. Yes, the other letter was in a bedroom off the den, which was near, let's see, the northwest part of the house, which is catercorner from the room where the body was found.

Q. Was that inside of something or was it sitting on something?

A. It was laying on the top of a chest of drawers, it was a red Christmas card and inside the Christmas card was a folded letter.

Q. Was the defendant still on the scene at that time?

A. No.

Q. Was the victim still on the scene?

A. Yes.

Q. And were there other people there other than the police?

A. There was a Debra Bonin and Donald Thompson.

Q. Where were they located?

A. They were outside when I got there.

MR. CULLEN:

No further questions at this time.

CROSS EXAMINATION

BY MR. CARDONE:

Q. Sergeant Masson, I'd like to ask you a few questions, did you secure a search warrant for the premises?

A. No.

Q. When you arrived there was not the defendant unconscious at the time of your arrival?

A. She was not there when I arrived.

Q. Were you doing a follow-up investigation?

A. I was assisting in the processing of the scene.

Q. Could anyone have removed, other than the police, could anyone have removed the pages found or the Christmas card or the paper that was torn up or the gun that was found in the chest of

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drawers, could anyone have removed them other than a police officer while you were investigating the scene?

A. It was my information from Ms. Bonin, I learned that she was called to the house by her mother and she arrived prior to the police officers.

Q. Was anyone, what I'm asking, you found all of that evidence after Ms. Bonin and Ms. Thompson were removed from the residence, is that right?

A. When I arrived, Ms. Bonin, she was getting ready to leave to go to the hospital to see her mother and Donald was outside, and he came inside and sat in the kitchen.

Q. Was the evidence discovered after that?

A. Around the same time, it's hard to pin point but it was during the same time that he was sitting in the kitchen.

Q. Could Donald have removed the gun from the chest of drawers without being detected?

A. I doubt it.

Q. How many police officers were on the scene?

A. At least five originally when I arrived there were five, including Zinna, and I believe one of the others, or two of the officers left.

Q. It's fair to say that Mr. Thompson, Donald, the child, could not have gone into a bedroom where the decedent was laying without being detected, you would not allow --

A. Yes, that is correct.

Q. You would not have allowed him to go into the bedroom?
A. No, sir.
Q. Nor would you have allowed him to go to the bathroom that was attached to that adjoining bedroom?
A. Not that bathroom, no.
Q. During the period of time when Mr. Thompson was sequestered, if you will, in the kitchen, is that when the evidence was found?
A. Yes, he was not in either of the rooms.
Q. How long did the investigation take to the best of your knowledge?
A. I would say approximately two hours.
Q. You certainly had enough time to obtain a search warrant?
A. Yes.
Q. And these chest of drawers the gun was found in, it was closed, is that right?
A. Okay, I didn't find the gun.
Q. Do you know if it was closed or open?
A. I did not find the gun, the note was found on top of a chest of drawers in another room.
Q. That was found by you?
A. Yes.
Q. Go ahead?
A. I understand from the deputy when I first arrived that that's the room where they found Mrs. Thompson.
Q. But, she was not there when the note was discovered though?

A. No, sir, she was not there when I arrived, she had gone.
Q. Was any physical evidence in the scene, in other words, the body of the decedant and the guns that he were laying on, when you first arrived and saw him, was anything there that would indicate that a gun was in that chest of drawers?
A. No, not that I'm aware of.
Q. Was there anything to indicate, any physical facts that you observed that would indicate that a note was to be found in a Christmas card in that particular room?
A. No, sir, when I went to view the room where I understand from the deputy Mrs. Thompson was found, that's when I found the Christmas card.
Q. Was it lying open or was there anything to indicate independently that the note was inside the Christmas card?
A. No, but there was other evidence in that room also, there was a sheet that we picked up off the bed that had a red substance on it, that's the bed that Mrs. Thompson was on.
Q. What I'm trying to get to sir, did you conduct a general exploratory search to find any pieces of evidence that could potentially relate to the investigation?
A. Yes.
Q. Did you receive any consent from anyone to do that?

A. No.

Q. And of course the gun was not in plain view, is that correct?

A. As far as I'm aware, it was not, but I didn't find a gun.

Q. The note was inside of the Christmas card?

A. No, the Christmas card was in plain view on top the chest of drawers.

Q. But that would not indicate in and of itself that there was evidence of a crime?

A. It was a Christmas card to my wife.

Q. And this may be repetitive but at the time all of that was seized, there was no one related to the defendant or the family that could have taken away from the scene or destroyed anything?

A. It would have been very unlikely.

Q. Because the house was cordoned by police officers?

A. Yes.

MR. CARDONE:

No further questions.

REDIRECT EXAMINATION

BY MR. CULLEN:

Q. Detective, you said that other evidence was obtained, you mentioned a sheet or a spread or something?

A. In the bedroom where I had learned from the officers on the scene, when I first arrived, I understood that Mrs. Thompson was in, in that bedroom, the back bedroom is where I found the Christmas card and I went to view that part of

the scene, and I had the crime lab pick up that sheet, I believe it was a pink and white sheet with a blood-like substance, it was a very small amount of blood-like substance.

MR. CARDONE:

That was not the subject of my motion to suppress.

BY MR. CULLEN:

Q. Any items that had blood or what appeared to be blood on them?

A. Just the articles that were taken from the other bedroom where the body was, that was the only other articles that were picked up.

MR. CULLEN:

No further questions.

THE COURT:

Officer, when you went to the other bedroom, you were not looking for a Christmas card or anything of that kind?

THE WITNESS:

No, sir, I was just doing that as part of the formal scene investigation and the reason that I went to that room is I learned that from the original officer on the scene that that was the room where Mrs. Thompson was located when they arrived on the scene.

THE COURT:

And it was through your investigation that you found this Christmas card?

THE WITNESS:

Yes, well, this was in May, and this was a Christmas card on top of a chest of drawers and May was not really Christmas season, and it was just normal curiosity I looked in it.

THE COURT:

And it was addressed to my husband?

THE WITNESS:

It was not in the envelope and inside the Christmas card itself was a note, and I believe it said to my wife at Christmas, and it was signed by Sylvester.

MR. CARDONE:

That was the card, not the note?

THE WITNESS:

The card was signed by Sylvester.

THE COURT:

You may step down.

* * * * * * * * *

C E R T I F I C A T E

I, Susan Stentz, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings in the entitled and numbered cause held on Thursday, September 23, 1982, before the Honorable Lionel R. Collins, Judge presiding, Division "L".

SUSAN STENTZ
Official Court Reporter
24th Judicial District Court
Parish of Jefferson
State of Louisiana

APPENDIX "D"

DISSENTING OPINION OF

JUSTICE DENNNIS

LOUISIANA SUPREME COURT

CONSISTING OF PAGES 1 THRU 7

SUPREME COURT OF LOUISIANA

No. 82-KK-2859

STATE OF LOUISIANA

versus

LILLIAN THOMPSON

DENNIS, Justice, dissenting.

I respectfully dissent.

The major issue presented by this case is whether the warrantless search of the defendant's residence for evidence violated the state and federal prohibitions against unreasonable searches and seizures.

The United States and Louisiana Constitutions expressly proscribe all "unreasonable searches and seizures." U.S. Const. amend. XIV; La. Const. 1974, art. I, § 5. It is a cardinal principle of constitutional law that searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable--subject only to a few specifically established and well-delineated exceptions. Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978); Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1968); Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967); State v. Ludwig, 423 So.2d 1073 (La. 1982); State v. White, 399 So.2d 172 (La. 1981). Once the defendant makes the initial showing at a motion to suppress hearing that a warrantless search occurred, the burden of proof shifts to the state to affirmatively show that the search is justified under one of the narrow exceptions to the rule requiring a search warrant. State v. Franklin, 353 So.2d 1315 (La. 1977); La. C.Cr.P. art. 703D; See also, Lafave, Search and Seizure--A Treatise on the Fourth Amendment, § 6.6 (1978). Counsel for the State asserts that this affirmative showing was

made, arguing that the report of a homicide justified the officers' warrantless entry into defendant's home and that the Christmas card and suicide note which were "in plain view" were properly seized.

The United States Supreme Court in Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), held that a "murder scene exception" to the warrant requirement created by the Arizona Supreme Court is inconsistent with the Fourth and Fourteenth Amendments, and restated the rules governing the search of a person's home. Warrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment. Mincey v. Arizona, supra, at 394, 98 S.Ct. at 2414, 57 L.Ed.2d at 301; McDonald v. United States, 335 U.S. 451, 456, 69 S.Ct. 191, 193, 93 L.Ed. 153, 158 (1948). For example, the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Similarly, when the police come upon the scene of a homicide they may make a prompt, warrantless search of the area to see if there are other victims or if a killer is still on the premises. Mincey v. Arizona, supra, 473 U.S. at 392, 98 S.Ct. at 2413, 57 L.Ed.2d at 300. Cf. Michigan v. Tyler, 436 U.S. 499, 509-10, 98 S.Ct. 1942, 1949-50, 56 L.Ed.2d 486, 498-99 (1978). A warrantless search must, however, be "strictly circumscribed by the exigencies which justify its initiation." Mincey v. Arizona, supra, 437 U.S. at 393, 98 S.Ct. 2413, 57 L.Ed.2d at 300, citing Terry v. Ohio, 392 U.S. 1, 25-26, 88 S.Ct. 1868, 1882, 20 L.Ed.2d 889, 908 (1968). See also Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969)(search of arrested

suspect and area within his control for weapons or evidence); Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed. 782 (1967)("hot pursuit" of fleeing suspect); Schmerber v. California, 384 U.S. 775, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966)(imminent destruction of evidence). In sum, when an exigent circumstance, such as a report of a homicide, is used as the reason for operating in an otherwise illegal manner, the search must be limited to the parameters of the exigency itself. Satchell v. Cardwell, 653 F.2d 408 (9th Cir. 1981).

Applying these precepts, it is clear that the trial judge correctly suppressed the gun and the suicide note as products of an unlawful warrantless search.

The deputies first summoned to the murder scene were entitled to make, and did make, a prompt warrantless search of the premises to see if there were other victims or persons in need of immediate aid or if a killer was still on the premises. Their search was strictly confined to these purposes.

The search conducted by the homicide detectives which resulted in uncovering the gun and suicide note, however, was not a response to an emergency situation because the detectives could not have reasonably believed that there was anyone within the house who was a victim, culprit or a person in need of aid. As the detectives were aware, before they began their search, their fellow officers had surveyed the premises for other persons, removed the occupants and secured the house against intruders. The detectives frankly testified that they had ample time to obtain a warrant, but chose not to do so, and that the suicide note was discovered during a systematic search for evidence.

The state strenuously argues, however, that the alleged suicide note was properly seized as it was in plain

view during the course of the legitimate emergency activities. Michigan v. Tyler, supra, 436 U.S. at 509-10, 98 S.Ct. at 1950, 56 L.Ed.2d at 498; Coolidge v. New Hampshire, 403 U.S. 443, 465-66, 91 S.Ct. 2022, 2037-38, 29 L.Ed.2d 564, 582-83 (1971).

The seizure fulfilled none of the requisites of the plain view rule, however. The conditions necessary for the discovery of evidence in "plain view" and subject to seizure are: (1) there must be a prior justification for the officer's intrusion into a protected area, (2) in the course of which evidence is discovered inadvertently, and (3) where it is immediately without close inspection that the items are evidence or contraband. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); State v. Fearn, 345 So.2d 468 (La. 1977); See also, State v. Meichal, 290 So.2d 878 (La. 19740. In the instant case, none of the conditions essential to a plain view seizure were met. As we noted earlier, the homicide detectives' intrusion into the defendant's home was not justified because the limited search for casualties, captives, victims or culprits necessitated by the exigency had been fully performed by other officers and the detectives admitted that their intrusion was purely a search for evidence under non-exigent circumstances. The note was not discovered inadvertently, but was found during this intentional detailed search for evidence. It was not immediately apparent that a note was inside the closed card, and it was certainly not apparent that the closed card contained evidence of the homicide. Accordingly, the seizure of the note cannot be sustained by the plain view exception to the warrant requirement.

Therefore, it is clear that the detectives did not respond to an emergency situation but engaged in a deliberate warrantless search for evidence which is

proscribed by the Fourth Amendment. The initial entry by the other officers was unquestionably a lawful response to an emergency situation. But, the general warrantless search by the two homicide detectives who arrived at the murder scene after the victim had been discovered, the defendant had been taken to the hospital, a search for other occupants had been made, and the scene had been secured, was clearly illegal and unjustified because of the absence of any emergency or exigency. Mincey, supra at 393, 98 S.Ct. at 2413-2414. Further, this court should not accept, for the reasons outlined above, the State's contention that the challenged search and seizure fell within the ambit of the plain view exception to the warrant requirement.

At oral argument and in deliberations this court has considered at least two approaches toward limiting the principle of the Mincey case. First, by limiting its holding strictly to its facts; and, second, by constructing a theory of implied consent whereby it could be presumed that a victim slain in his own home has given permission for a general search in connection with the detection and apprehension of his murderer. See Lafave, supra § 6.5(e). Careful consideration of the Mincey opinion, however, convinces me that neither interpretation is warranted.

The facts of the present case are different from Mincey in that here the victim was slain in his own home and the intrusion by the homicide detectives was not as aggravated as the four day intensive search performed by the officers in Mincey. Nevertheless, the principles of the Mincey decision clearly have application beyond the particular facts of that case. The court began by reaffirming the principle stated in Katz v. U.S. supra that a search conducted without a warrant issued on probable cause is per se unreasonable subject only to a few

specifically established and well delineated exceptions. The opinion flatly rejected the idea that the search of a homicide scene, without more, should be considered as a valid generic exception. Mincey, supra at 390, 391. In totally rejecting the Arizona murder scene exception, the high court was aware that the Arizona cases indicated that the exception had been applied in instances in which homicides had occurred at the home of the victim. Mincey, supra at 392 n. 5. The Mincey opinion recognized that within the "few specifically established and well delineated exceptions" are certain emergency situations, viz., entries and searches upon reasonable belief that a person within is in need of immediate aid or a prompt warrantless search to see if there are other victims or if a killer is still on the premises. But the Court clearly indicated that such an exceptional warrantless search must be strictly circumscribed by the life or limb threatening emergency which justifies its initiation. Finally, the court rejected Arizona's argument that a murder scene exception should be permitted because the search could be confined in scope and intensity by guidelines such as those set forth by the Arizona Supreme Court. In rejecting this approach, the court noted that Arizona would confer unbridled discretion upon the individual officer to interpret such terms as "reasonable . . . search" "serious personal injury with likelihood of death where there is reason to suspect foul play", and " reasonable period", and that it is precisely this kind of judgmental assessment of the reasonableness and scope of a proposed search that the Fourth Amendment requires be made by a neutral and objective magistrate, not a police officer. Mincey, supra at 396.

Consequently, it is clear that the high court has limited murder scene searches to those strictly necessary

to deal with emergencies threatening life and limb or to apprehend a killer on the premises. Whether the victim was slain in his own home or elsewhere is not relevant. Nor is the intensity or aggravated nature of the search, if the intrusion is not authorized by an emergency situation. Therefore, since the evidence is clear that there was no emergency at the time the search complained of in the present case was conducted, the intrusion was plainly unjustified and the trial court was correct in suppressing its fruits as evidence.

APPENDIX "E"

DISSENTING OPINION OF

CHIEF JUSTICE DIXON

LOUISIANA SUPREME COURT

CONSISTING OF PAGE 1

SUPREME COURT OF LOUISIANA

No. 82-KK-2859

STATE OF LOUISIANA

Versus

LILLIAN THOMPSON

DIXON, Chief Justice (dissenting)

I respectfully dissent.

All it would take to make this search legal is a warrant.

OPPOSITION BRIEF

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

Supreme Court, U.S.
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NO: 83-6775

LILLIAN THOMPSON,
PETITIONER

VERSUS

LOUISIANA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO: 83-6775

LILLIAN THOMPSON,
PETITIONER

VERSUS

LOUISIANA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

RESPONSE OF STATE OF LOUISIANA

MAY IT PLEASE THE COURT:

Respondent State of Louisiana respectfully prays that the writ of certiorari to review the judgment and opinion of the Louisiana Supreme Court entered in these proceedings on February 27, 1984, rehearing denied on March 23, 1984, be denied.

B. Statement Of The Facts

On July 2, 1982, an indictment was handed down by the Grand Jury for the Parish of Jefferson against one Lillian Thompson for the second degree murder of her husband, Sylvester J. Thompson; said murder occurred on May 18, 1982. On the same date as the murder, defendant, Lillian Thompson, was rushed to Southern Baptist Hospital, after an apparent suicide attempt.

In response to a call by defendant's daughter, police arrived at the scene of the murder and immediately began an investigation. Various items of evidence were seized at that investigation, including the alleged murder weapon, which was found inside a dresser drawer about six feet away from the victim, and a suicide note, which was inside a Christmas card lying in plain view on top of the dresser of defendant's bedroom.

Defendant's motion to suppress the above evidence was denied but, on October 7, 1982, after a hearing on a "Motion for Rehearing of Motion To Suppress the Evidence", the trial judge reversed his denial and granted the motion to suppress. After the State's Application for Writs was denied by the Fifth Circuit Court of Appeals, No. 82-K-159, the State sought writs in the Supreme Court, State of Louisiana, No. 82-KK-2859. The writ was granted and the Supreme Court subsequently reversed the trial court finding that the seizures made by the police under these facts were reasonable.

LAW AND ARGUMENT

I. CONSENT EXCEPTION

The issue before this Honorable Court, the warrantless search of the murder scene, is based on the Fourth Amendment which protects the "security of one's privacy against arbitrary intrusion by the police. . ." Wolf v. Colorado, 338 U.S. 25, 27, 93 L.Ed. 1782, 69 S.Ct. 1359. It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is "per se unreasonable. . . subject only to a few specifically established and well-delineated exceptions." Schneckloth v. Bustamonte, 412 U.S. 218, 36 L.Ed.2d 854, 93 S.Ct. 2041. One of the specifically enumerated exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent. Schneckloth v. Bustamonte, supra. The constitutional question in the case at bar concerns the warrantless search of a home based on probable cause, and made with the implied consent of those with authority over the home.

The Jefferson Parish Sheriff's deputies had more than ample facts to establish probable cause for a search warrant. Detective Sam Zinna testified at the Motion to Suppress that he was called to investigate a possible homicide in a residence about 9:15 a.m. Upon arriving at the scene he learned that the victim, Mr. Thompson was located in the east bedroom of the residence dead from gun shot wounds inflicted by his wife, defendant herein, after which defendant had taken an overdose of drugs. Before Detective Zinna arrived defendant had been removed from the residence and rushed to the hospital. (Motion To Suppress, p. 3). After talking briefly with the victim's daughter outside the house, Detective Zinna began processing the scene of the crime while the house was secured by the police to prevent destruction of evidence. (M.T.S., pp 4-5). After the initial cursory search of the house produced no other victims or evidence, the

deputies proceeded to do a thorough search of the residence. These facts supply ample probable cause for a warrant to search the residence for additional evidence, including the murder weapon which was not found upon the cursory search.

It is clear from the testimony at the Motion To Suppress that there would have been time and probable cause to obtain a warrant before conducting a search but, in fact, the deputies proceeded with a warrantless search of the residence. Pursuant to this search evidence was found which the defendant moved to suppress. The issue then is whether this warrantless search falls within a consent exception to the warrant requirement of the Fourth and Fourteenth Amendments such that the evidence should not be suppressed.

It is well settled that a person may waive his or her Fourth Amendment rights by consenting to a search. Bumper v. North Carolina, 391 U. S. 543, 548-49, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968). The consent may be in the form of words, gesture, or conduct. Robbins v. MacKenize, 364 F.2d 45, 48-49 (1st Cir. 1966), cert. denied, 385 U.S. 913, 87 S.Ct. 215, 17 L.Ed.2d 140 (1966); United States v. Griffin, 530 F.2d 739 (1976). The consent, however, must be voluntry, i.e. freely and intelligently given. Bumper v. North Carolina, supra, 391 U.S. at 548, 88 S.Ct. 1788. While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of an effective consent. Schneckloth v. Bustamonte, 412 U.S. 218, 36 L.Ed.2d 854, 93 S.Ct. 2041 (1973).

Since the existence and voluntariness of a consent is a question of fact, Maxwell v. Stephens, 348 F.2d 325, 336 (8th Cir. 1964), the totality of the circumstances must be considered. Schneckloth v. Bustamonte, supra. Therefore, only where the district court's finding is clearly erroneous may a reviewing court set it aside. Id. After reviewing the following facts of the case at bar, it is clear that the district court erred such that the Louisiana Supreme Court properly reversed its decision.

Based on the facts and circumstances in this case, it can be concluded that the deputies searched the residence in good faith. Although the deputies testified that they did not obtain consent to search from the children, it is evident on the facts that there was an implied consent by the son and daughter. Sgt. Robert Masson testified that he learned that the daughter, Ms. Bonin, had been called to the house by the mother and had arrived before the police officers (M.T.S., p. 17). Moreover, it was one of the children who notified the police of the homicide. Having been called by the children and invited into the residence by them, the police could easily conclude an implied consent to search the house as a part of their investigating procedure.

According to Det. Zinna's testimony, Ms. Bonin, the daughter, was outside the residence with Sgt. Masson when he arrived. (M. T. S., p. 5.) She was preparing to leave for the hospital to be with her unconscious mother. Moreover, there was no testimony as to any resistance by Ms. Bonin to the continuing investigation. Sgt. Masson also testified that when he arrived both son and daughter were outside but the son, Mr. Thompson, followed him inside and sat in the kitchen while he searched the premises. (M. T. S., p. 17.) It is clear from these facts that both children gave approval to the search of the residence by their gestures and conduct. Since there is no evidence in the record to rebut this tacit approval by the children to search, the facts support a voluntary consent to search the house, valid under the Fourth Amendment.

In order to establish that the voluntary consent to the warrantless search was valid it must be shown that it was given by someone, if not defendant or the victim, who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected. United States v. Matlock, 415 U.S. 164, 39 L.Ed.2d 242, 94 S.Ct. 988 (1974). This court further explained in Matlock, supra, that the authority which justifies the third party consent rests on the mutual use of the property by persons generally having joint access or control for most purposes such that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right. Furthermore, this Court continued, the other occupants have assumed the risk that one of their number might permit the common area to be searched. According to Det. Zinna's testimony both children lived with their parents in the home, (M.T.S., p. 8) relevant information omitted from defendant's brief. Clearly, the son and daughter, as co-inhabitants of the home, had the right to permit the search.

An additional factor to be considered is that the mother was unconscious and the father dead. Under the circumstances, the son and daughter, currently living with the parents, would have assumed custody of and control over the residence.

A summation of the factors is that one of the children summoned the police, defendant herself called the daughter for help and admitted to what had occurred, both children greeted police, both freely conversed with police, and the son returned to the kitchen where he stayed until the search was completed. The totality of these circumstances support the voluntary consent by the conduct and gestures of the children such that the search herein should be declared within the purview of the Fourth Amendment and the evidence gathered pursuant to said search admissible at trial.

II. INEVITABLE DISCOVERY RULE

In the alternative, if this Court finds that there was inadequate consent to search the victim's residence, the State submits that the evidence obtained should **not** be suppressed based upon the inevitable discovery rule. The doctrine of inevitable discovery permits the prosecution to purge the taint of illegally obtained evidence which would have inevitably been discovered by proper and predictable investigatory procedures. The purpose of the doctrine is to block setting aside convictions that would have been obtained without police misconduct. The United States Supreme Court in Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977), suggested that the inevitable discovery doctrine might be utilized to purge the taint to the discovery of the murder victim's body that flowed from the illegal deprivation of counsel (the Brewer case involved the brutal murder of a ten year old girl).

The United States Supreme Court in Nix v. Williams, 104 S.Ct. 2501, 2507-2512 (1984) adopted the inevitable discovery doctrine. There the court held that the evidence pertaining to the discovery and condition of the victim's body was properly admitted at the respondent's second trial on the ground that it would ultimately or inevitably have been discovered even if no violation of any constitutional provision had taken place. Nix v. Williams, supra. Inevitability depends upon an evaluation of the location and physical nature of the disputed evidence and the timing of its potential discovery. In the case at bar the police officers were summoned to a homicide scene at the victim's home by his daughter. The officers found the disputed evidence at the scene of the crime: the gun was found in the chest of drawers in the victim's bedroom and the suicide letter was found tucked inside a Christmas card in one of the bedrooms. The disputed evidence was not in anyone else's control and it would have been found with or without a warrant.

Based upon the totality of the circumstances of an investigation of an attempted suicide and a homicide in a residence, the warrantless search of the defendant's home was reasonable and did not unconstitutionally violate the privacy interest of the occupants. The son and daughter of the couple greeted the police officers and ushered them into the home where the son remained for the duration of the search. Nowhere in the testimony is there evidence that the son or daughter gave the police any reason to suspect that they could not conduct a full investigatory search for evidence. The State urges this Court to apply the inevitable discovery rule because it is clear that the police officers did act in good faith and did not attempt to accelerate the discovery of the evidence through illegal conduct.

The single and distinct purpose of the exclusionary rule is deterrence of police misconduct. The goal of the Fourth Amendment is to provide protection against unreasonable searches and seizures. Tehan v. United States ex rel Shott, 382 U.S. 406, 413, 86 S.Ct. 459, 463, 15 L.Ed.2d 453 (1966). Deterrence is only marginally served by suppression of testimony derived from illegally obtained evidence if such testimony would have been discovered without the illegal actions, because the motivation for the illegal search or interrogation was not the question for derivative evidence that the police were already pursuing and would probably have been discovered in any event. U. S. v. Brookins, 614 F.2d. 1037, 1047 (5th Cir. 1980).

Suppression of the evidence would operate to undermine the adversary system by putting the State in a worse position than it would have occupied without any police misconduct. The State submits that the suppression is just too high a price to pay in cases where tainted evidence would undoubtedly have been discovered. The deterrent impact and trustworthiness effect from excluding inevitably discovered evidence must be balanced against the State's interest in enforcing the criminal laws and protecting society from criminals. Stone v. Powell, 428 U.S. 465, 487, 96 S.Ct. 3037, 3049 (1976).

According to defendant's daughter, the defendant shot her husband, then ingested a quantity of pills in a suicide attempt, and then, changing her mind, called her daughter, informed her of the situation and requested help. If the evidence in question is suppressed the ends of justice will **not** be served. In this instance, society will have to pay the high social cost of releasing an obviously guilty person.

The defendant maintains that Mincey v. Arizona, 437 U.S. 385 (1978) dictates that evidence seized during a warrantless search of a murder scene must be suppressed as the fruit of an illegal search. However, Mincey can be distinguished from the facts. In Mincey an undercover police officer was shot and killed during a raid on the defendant's apartment. The police secured the scene and conducted an intense four day search. The United States Supreme Court found this extensive warrantless search was unreasonable and illegal.

In distinguishing Mincey the Louisiana Supreme Court held:

> "The Mincey case, however, involved a victim killed on another's property. The policeman killed had no privacy interest in the apartment that was searched. In the case before us, the victim was killed in his own home. While the policeman shot in Mincey could not have consented to the search of the apartment

he was shot in, as he had no authority over that apartment, Mr. Thompson had authority over the premises wherein he was killed and, had he survived until the police arrived, could have consented to their search even over the protests of the defendant. United States v. Matlock, 415 U.S. 164 (1974); State v. Dowling, supra; State v. Dupuy, 319 So.2d 299 (La. 1975). Additionally, the two hour, same day search conducted at the Thompson residence was far less aggravated than the four day intensive investigation that was the subject of the Mincey opinion. For these reasons, we find the instant case distinguishable from Mincey.

> "Additional facts in this case evidence a diminished privacy expectation by the defendant. The defendant herself telephoned her daughter, informed her of the situation and requested assistance. The daughter then called the police, met them at the defendant's residence, and let them in. The defendant was found in an unconscious state. The police were faced with a situation where both parties with authority over the premises were either dead or unconscious and in an apparently grave condition. A third party, defendant's daughter, portraying an apparent authority over the premises through the defendant's request for assistance, met and admitted the police to the premises. Thus, the defendant's privacy interests under these facts are greatly diminished from those of the defendant in Mincey."

State v. Lillian Thompson, 448 So.2d 666, 671 (La. 1984).

CONCLUSION

The State urges that this Honorable Court affirm the judgment of the Louisiana Supreme Court based on the voluntary consent to search the residence give by the children.

If this Court should decide that the search herein was not based on the consent exception to the warrant requirement then it should consider that the taint of the search was purged by the good faith conduct of the police officers and, after balancing the alleged illegal conduct against the State's interest in enforcing the criminal laws and protecting society from criminals, declare that the evidence was improperly suppressed. The State submits that the decision of the Louisiana Supreme Court should be affirmed.

Respectfully Submitted,

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CERTIFICATE

I, William C. Credo, III, a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 11th day of August, 1984, I served a copy of the brief in opposition on each of the parties thereto, as follows:

1. On petitioner, **Lillian Thompson** through her counsel of record, **Clifford E. Cardone, 1226 N. Broad Street, New Orleans, Louisiana 70119.**

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

William C. Credo, III
WILLIAM C. CREDO, III

CERTIFICATION OF EXHIBITS

I hereby certify that the State adopts the exhibits labeled as Appendices A thru E as joint exhibits.

William C. Credo, III
WILLIAM C. CREDO, III

OPINION

SUPREME COURT OF THE UNITED STATES

LILLIAN THOMPSON *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 83–6775. Decided November 26, 1984

PER CURIAM.

In this case, the Louisiana Supreme Court upheld the validity of a warrantless "murder scene" search of petitioner's home. Because this holding is in direct conflict with our opinion in *Mincey* v. *Arizona*, 437 U. S. 385 (1978), we reverse.

I

The Louisiana Supreme Court states the facts as follows:

> "On May 18, 1982, several deputies from the Jefferson Parish Sheriff's Department arrived at [petitioner's] home in response to a report by the [petitioner's] daughter of a homicide. The deputies entered the house, made a cursory search and discovered [petitioner's] husband dead of a gunshot wound in a bedroom and the [petitioner] lying unconscious in another bedroom due to an apparent drug overdose. According to the [petitioner's] daughter, the [petitioner] had shot her husband, then ingested a quantity of pills in a suicide attempt, and then, changing her mind, called her daughter, informed her of the situation and requested help. The daughter then contacted the police. Upon their arrival, the daughter admitted them into the house and directed them to the rooms containing the [petitioner] and the victim. The deputies immediately transported the then unconscious [petitioner] to a hospital and secured the scene. Thirty-five minutes later two members of the homicide unit of the Jefferson Parish Sheriff's Office arrived and conducted a follow-up investigation of the homicide and attempted suicide.

> "The homicide investigators entered the residence and commenced what they described at the motion to suppress hearing as a 'general exploratory search for evidence of a crime.' During their search, which lasted approximately two hours, the detectives examined each room of the house." *State* v. *Thompson*, 448 So. 2d 666, 668 (La. 1984).

Petitioner was subsequently indicted for the second degree murder of her husband. She moved to suppress three items of evidence discovered during the search, including a pistol found inside a chest of drawers in the same room as the deceased's body, a torn up note found in a wastepaper basket in an adjoining bathroom, and another letter (alleged to be a suicide note) found folded up inside an envelope containing a Christmas card on the top of a chest of drawers. All of this evidence was found in the "general exploratory search for evidence" conducted by two homicide investigators who arrived at the scene approximately 35 minutes after petitioner was sent to the hospital. See *ibid.* By the time those investigators arrived, the officers who originally arrived at the scene had already searched the premises for other victims or suspects. See *Mincey*, *supra*, 437 U. S., at 392. The investigators testified that they had time to secure a warrant before commencing the search, see *State* v. *Thompson*, *supra*, at 668, and that no one had given consent to the search, see Petition for Certiorari App. A, at 8, 19–20 (transcript of testimony of Detectives Zinna and Masson at suppression hearing).

The trial court originally denied petitioner's motion to suppress. However, the trial court then granted petitioner's motion for reconsideration and partially reversed its former decision, holding that the gun and the suicide letter found in the Christmas card were obtained in violation of the Fourth Amendment and therefore must be suppressed. The Louisiana Court of Appeal denied the State's application for a writ of review. A sharply divided Louisiana Supreme Court subsequently held all of the evidence seized to be admissible.

II

As we stated in *United States* v. *Chadwick*, 433 U. S. 1, 9 (1977), "in this area we do not write on a clean slate." In a long line of cases, this Court has stressed that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." *Katz* v. *United States*, 389 U. S. 347, 357 (1967) (footnotes omitted). This was not a principle freshly coined for the occasion in *Katz*, but rather represented this Court's long-standing understanding of the relationship between the two clauses of the Fourth Amendment.[1] See *Katz*, *supra*, at 357 n. 18 and 19. Since the time of *Katz*, this Court has recognized the existence of additional exceptions. See, *e. g.*, *Donovan* v. *Dewey*, 452 U. S. 594 (1981); *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976); *South Dakota* v. *Opperman*, 428 U. S. 364 (1976). However, we have consistently reaffirmed our understanding that in all cases outside the exceptions to the warrant requirement the Fourth Amendment requires the interposition of a neutral and detached magistrate between the police and the "persons, houses, papers and effects" of the citizen. See, *e. g.*, *Welsh* v. *Wisconsin*, —— U. S. ——, —— (1984); *United States* v. *Place*, —— U. S. ——, —— (1983); *United States* v. *Ross*, 456 U. S. 798, 824–825 (1982); *Steagald* v. *United States*, 451 U. S. 204, 211–212 (1981); *Mincey*, *supra*, at 390; *Coolidge* v. *New Hampshire*, 403 U. S. 443, 474–475 (1971) (plurality opinion);

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[1] "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized." U. S. Const. amend. 4.

Vale v. *Louisiana*, 399 U. S. 30, 34 (1970); *Terry* v. *Ohio*, 392 U. S. 1, 20 (1968).

A

Although the homicide investigators in this case may well have had probable cause to search the premises, it is undisputed that they did not obtain a warrant.[2] Therefore, for the search to be valid, it must fall within one of the narrow and specifically delineated exceptions to the warrant requirement. In *Mincey* v. *Arizona*, 437 U. S. 385 (1978), we unanimously rejected the contention that one of the exceptions to the warrant clause is a "murder scene exception." Although we noted that police may make warrantless entries on premises where "they reasonably believe that a person within is in need of immediate aid," *id.*, at 392, and that "they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises," *ibid.*, we held that "the 'murder scene exception' . . . is inconsistent with the Fourth and Fourteenth Amendments—that the warrantless search of Mincey's apartment was not constitutionally permissible simply because a homicide had recently occurred there." *Id.*, at 395. *Mincey* is squarely on point in the instant case.

B

The Lousiana Supreme Court attempted to distinguish *Mincey* in several ways. The court noted that *Mincey* involved a four-day search of the premises, while the search in this case took only two hours and was conducted on the same day as the murder. See *State* v. *Thompson*, *supra*, at 671. Although we agree that the scope of the intrusion was certainly greater in *Mincey* than here, nothing in *Mincey* turned on the length of time taken in the search or the date on which it was conducted. A two-hour general search remains a significant intrusion on petitioner's privacy and therefore may only be conducted subject to the constraints—including the warrant requirement—of the Fourth Amendment.

[2] Indeed Chief Justice Dixon's dissent in this case in the Louisiana Supreme Court reads in its entirety as follows: "I respectfully dissent. All it would take to make this search legal is a warrant." *State* v. *Thompson*, 448 So. 2d 666, 673 (1984).

The Louisiana Court also believed that petitioner had a "diminished" expectation of privacy in her home, thus validating a search that otherwise would have been unconstitutional. *Ibid.* The court noted that petitioner telephoned her daughter to request assistance. The daughter then called the police and let them in to the residence. These facts, according to the court, demonstrated a diminished expectation of privacy in petitioner's dwelling and therefore legitimated the warrantless search.[3]

Petitioner's attempt to get medical assistance does not evidence a diminished expectation of privacy on her part. To be sure, this action would have justified the authorities in seizing evidence under the plain view doctrine while they were in petitioner's house to offer her assistance. In addition, the same doctrine may justify seizure of evidence obtained in the limited "victim-or-suspect" search discussed in *Mincey*. However, the evidence at issue here was not discovered in plain view while the police were assisting petitioner to the hospital, nor was it discovered during the "victim-or-suspect" search that had been completed by the time the homicide investigators arrived. Petitioner's call for help can hardly be seen as an invitation to the general public that would have converted her home into the sort of public place for which no warrant to search would be necessary. Therefore, the Louisiana Supreme Court's diminished expectation

[3] The Louisiana Supreme Court seemed to believe that the fact that "both parties with authority over the premises [petitioner and her husband] were either dead or unconscious and in an apparently grave condition," *State* v. *Thompson*, *supra*, at 671, in some way diminished petitioner's expectation of privacy in the premises. Yet neither petitioner's unavailability nor the death of her husband have any bearing on petitioner's continuing privacy interests.

of privacy argument fails to distinguish this case from *Mincey*.[4]

The State contends that there was a sufficient element of consent in this case to distinguish it from the facts of *Mincey*. The Louisiana Supreme Court's decision does not attempt to validate the search as consensual, although it attempts to support its diminished expectation of privacy argument by reference to the daughter's "apparent authority" over the premises when she originally permitted the police to enter. *State* v. *Thompson*, *supra*, at 671. Because the issue of consent is ordinarily a factual issue unsuitable for our consideration in the first instance, we express no opinion as to whether the search at issue here might be justified as consensual. However, we note that both homicide investigators explicitly testified that they had received no consent to search. Any claim of valid consent in this case would have to be measured against the standards of *United States* v. *Matlock*, 415 U. S. 164 (1974) and *Schneckcloth* v. *Bustamonte*, 412 U. S. 218 (1973).

III

For the reasons stated above, petitioner's motion for leave to proceed *in forma pauperis* is granted, the petition for writ of certiorari is granted, the judgment of the Louisiana Supreme Court is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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[4]The Louisiana court's argument in fact closely resembles an argument we rejected in *Mincey*. See *id.*, at 391–392.